

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

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Federal-State Joint Board on
Universal Service

CC Docket No. 96-45

SEP - 3 1997

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

AT&T REPLY TO OPPOSITIONS TO ITS PETITION FOR RECONSIDERATION

Pursuant to Section 1.429 of the Commission's Rules, 47 C.F.R. § 1.429, and its Public Notice, FCC Report No. 2212, published in the Federal Register on August 1, 1997 (62 Fed. Reg. 41386), AT&T Corp. ("AT&T") hereby replies to other parties' oppositions to its petition for reconsideration of the May 8, 1997 Universal Service Order¹ which asked the Commission to adopt a mandatory end user surcharge as the recovery mechanism for universal service support. By separate pleading filed today, AT&T replies to other parties' oppositions to its petition for reconsideration of the May 16, 1997 Access Reform Order.²

¹ Federal-State Joint Board on Universal Service, CC Docket No. 96-45, Report and Order, FCC 97-157, released May 8, 1997, and published in the Federal Register on June 17, 1997 (62 Fed. Reg. 32862), pets. for review pending sub nom. Texas Office of Public Utility Counsel v. FCC, Nos. 97-60421 et al. (5th Cir.) ("Universal Service Order"), id., Order on Reconsideration, FCC 97-246, released July 10, 1997; Second Order on Reconsideration, FCC 97-253, released July 18, 1997. Unless another Order is specifically referenced, all paragraph citations herein are to the Universal Service Order. Appendix A lists the parties filing oppositions to, or comments on, the petitions for reconsideration and the abbreviations used to identify them herein.

² Access Charge Reform, CC Docket Nos. 96-262, 94-1, 91-213, 95-72, First Report and Order, FCC 97-158, released May 16, 1997, and published in the Federal Register on June 11, 1997 (62 Fed. Reg. 31868) pets. for review pending sub nom.

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Preliminarily, AT&T could not agree more with AirTouch's observation (at 11) that, as the Commission is well aware, "universal service subsidies will be paid not by carriers but by consumers in the form of higher prices." In 1998 alone, the new universal service program can exceed \$4.6 billion. Accordingly, any pleas for additional subsidies must be balanced against upward pressure on pricing. *Id.* Moreover, as AT&T showed (at 2-8), the Commission's decision to limit federal funding for high cost support, given that only interstate revenues would be assessed for the high cost program, was reasonable. Absent expansion of the assessment and recovery mechanisms to include intrastate revenues, there should be no increase in the size of the federal universal service fund ("USF"). See TW Comm at 10-11.

THE COMMISSION SHOULD ADOPT A MANDATORY END USER SURCHARGE ON ALL INTERSTATE RETAIL TELECOMMUNICATIONS REVENUES AS THE RECOVERY MECHANISM FOR UNIVERSAL SERVICE SUPPORT.

Section 254(b)(4) of the Telecommunications Act of 1996 requires that all telecommunications service providers make an equitable and nondiscriminatory contribution to universal service support.³ As AT&T showed in its Petition (at 1-7) and Opposition

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Southwestern Bell Tel. Co. v. FCC, Nos. 97-2618 et al. (8th Cir.) ("Access Reform Order"), *id.*, Order on Reconsideration, FCC 97-247, released July 10, 1997.

³ Although the Commission requires that USF support be *assessed* in a competitively neutral manner, i.e., based on an interstate carrier's retail end user telecommunications service revenues (para. 772), the recovery of this assessment is not competitively neutral.

(at 14-17), the Commission's current USF recovery mechanism does not comply with this directive and should be reconsidered because it inappropriately transfers the incumbent local exchange carriers' ("ILECs'") USF obligation to other carriers and, most fundamentally, it has an acute discriminatory impact on carriers who enter the local service market through total service resale ("TSR") and who have no ability to deflect their USF obligations to wholesale customers through access charges. As MCI (at 19) confirms, because, under the Commission's rules, ILECs can pass through their universal service contributions to interexchange carriers ("IXCs") and competitive local exchange carriers ("CLECs") entering a market using resale, IXCs and CLECs will pay both their own contribution and that of the ILECs. This "skew[s] the competitive playing field in favor of incumbent LECs, because only they will be assured of recovery of these costs from their customers."⁴ *Id.*

Ad Hoc (at 7-9) underscores this result, stating that "[b]y favoring one class of local carriers (the incumbents) over another (new entrants), the Commission's decision to allow ILECs to recover their universal service contributions through the common line basket is inconsistent with the non-discrimination requirement of Section 254(b)(4)"⁵ (see also TW Comm at 12), and

⁴ MCI Comments, filed August 18, 1997, in Access Charge Reform, CC Docket 96-262, at 18-19 ("MCI Access Reform Comments"); see also American Petroleum Institute Reply, filed August 18, 1997, in Access Charge Reform, CC Docket 96-262, at 5-6 ("API").

⁵ Ad Hoc (at 6 n.14) mistakenly believes that AT&T does not support a national fund, both assessed against and recovered

with the Commission's "competitive neutrality" principle. MCI Access Reform Comments at 18-19. As GCI (at 9) observes, "ILECs should not be allowed to put the costs of their contribution to the universal service fund back on interexchange carriers." In particular, commercial mobile radio service ("CMRS") and other competitive providers will be competitively disadvantaged because, while an ILEC can absorb double digit USF assessments that it can pass on to others through access charges, CMRS providers (like CLECs entering through TSR) will have to pass on the assessment to end users. Comcast/Vanguard Petition at iv, 13.

The best "way to begin to address the competitive impact of the universal service levy is to *require* that USF contributions be an explicit line item on bills passed onto customers." Comcast/Vanguard at 6. This approach has broad -- indeed, virtually unanimous support -- among the parties. As BellSouth (at 7) correctly points out,

"[a]n end user surcharge is the recovery mechanism that is most consistent with the Act's requirement that universal service support be made explicit. To the extent that universal service contributions are recovered through service rates, such as access charges, then the very system of implicit support that the Telecommunications Act intended to be displaced will instead be perpetuated. Further, an end user surcharge ensures competitive neutrality. All carriers will recover their universal service contributions in

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from interstate and intrastate revenues. See AT&T at 5-6 and n.6. To the extent that AT&T suggests that the end user surcharge should be assessed on the interstate bill that is because, at least for now, the Commission decided to limit recovery of federal USF support to interstate revenues. See AT&T at 17 n.16.

the same manner and therefore no carrier would be advantaged or disadvantaged by factors such as incumbency or size of customer base."

In a similar vein, GTE (at ii) notes that "express end user surcharges . . . would ensure universal service is explicit and predictable as required by the Act, avoid disadvantaging any particular group of carriers, and avoid rate churn." Accord Sprint at 7. By contrast, "[p]ermitting incumbent LECs to effectively collect these monies from their IXC customers by permitting them to be buried in access charges is an entirely new implicit subsidy." MCI Access Reform Comments at 19. The Commission should therefore revise the current recovery mechanism.

In addition to curing the discriminatory effect of the current recovery mechanism and ensuring competitive neutrality, a retail surcharge offers numerous other benefits. As Ad Hoc (at 9) explains, an "explicit end user surcharge is preferable to a system whereby universal service contributors can recover their contributions through higher interstate rates because, among other things, it would promote accountability." Equally important, as a number of parties have shown in their comments in this docket, "an explicit surcharge on all end users' bills will create public pressure to keep overall subsidy levels reasonable and to make each end user aware of his own share of the universal service cost burden. End users ultimately pay for universal service even if contributors simply pass through their contributions in the form of higher rates; therefore, they have a right to know, and an interest in knowing, how much they are actually paying for universal service." *Id.* Moreover, as the

Comcast/Vanguard (Petition at iv, 13) observes, an end user surcharge would also moot allegations by customers that a permissive pass-through of the USF support assessment somehow constitutes an abrogation of fixed-price contracts between carriers and their customers (Ad Hoc Petition at 2-10; API Petition at 3-5) and "mitigate the potential damage to customer relations." TRA at 4. It would likewise moot the issue of whether the ILECs' USF assessments should be subject to price cap reductions through the normal operation of the X-Factor (productivity offset) in the price cap formula, an issue USTA raised in its Access Reform, CC Docket No. 96-262, Reconsideration Petition (at 5).

Indeed, given the overriding benefits of a mandatory end user surcharge, it is not surprising to find that only one party in this proceeding objects to its adoption.⁶ RTC (at 3) contends that "[n]either a mandatory end user surcharge nor a SLC increase meets the requirements of the Act or complies with the Joint Board recommendation outrightly rejecting a federally prescribed end-user surcharge as a means for carriers to recover or pass on universal service contributions." RTC claims that the "state Joint Board members rightly believed that state commissions should have an important role in deciding if the

⁶ In its Access Reform Reply, CC Docket 96-262, API (at 4-6) concurs with AT&T that allowing ILECs to recover their USF assessment through the Common Line basket violates competitive neutrality, but, like RTC here (and CPI in Docket 96-262), contends that the Act does not authorize the Commission to adopt a mandatory end user surcharge. See *id.*, Competition Policy Institute Partial Support and Partial Opposition to Petitions for Reconsideration and Clarification, at 13.

imposition of an end-user surcharge would render local rates unaffordable." *Id.*

First, RTC incorrectly views a mandatory end user surcharge as tantamount to a federally-prescribed local rate increase, even if it applied to local services. As Comcast/Vanguard (at 7) explains, the USF contribution is a self-imposed industry tax, and, as such, it is no more a local rate increase than if the federal excise or a state tax applicable to telecommunications services were increased. A mandatory end user surcharge ensures that each consumer pays his or her fair share of universal service support. In all events, at present, the Commission has decided to recover the federal USF obligation from the interstate jurisdiction and hence a retail surcharge would not impact local services, with the possible exception of the subscriber line charge ("SLC"). If the Commission decides to reconsider this aspect of its ruling (as AT&T and many others have urged it should) and if RTC's concern about affordability had any merit, a mandatory end user surcharge could apply to all services *other than* local.

Second, RTC's contention (at 3), and the Joint Board's finding, that a mandatory surcharge is prohibited -- by virtue of the Act's provision that "carriers" must contribute to universal service support -- are erroneous. Their reading of the Act cannot be squared with the statutory command that universal support should be "explicit." See Section 254(e). Moreover, there is no escaping the fact that consumers will ultimately bear the cost of universal service support, whether through carrier rates or a separate line-item on the retail bill. See Ad Hoc at

9; AirTouch at 11. As Bell Atlantic (at 10) correctly notes, the "Commission has the right to impose end user surcharges, so long as such surcharges are assessed [uniformly] on all end users and the carriers collect and pay those charges into the fund."

RTC's sole retort to the competitive imbalance under the current regime as between ILECs and CLECs seeking to enter the local service market through TSR is that the Commission specifically chose end user revenue assessments to satisfy competitive neutrality concerns and avoid double payment problems for resellers. RTC misses AT&T's point entirely. The mandatory end user surcharge would ensure that the FCC's retail revenue assessment (which AT&T supports) is recovered by all carriers from retail revenues. Under the current scheme, as AT&T has explained (Petition at 4), the ILEC retail revenue assessment is converted to a *wholesale revenue recovery* through access charges. It is this aspect of the program that has a discriminatory impact and violates competitive neutrality. Moreover, and contrary to RTC's implication (at 5), a mandatory end user surcharge would avoid any double payment problem because the tax would be recovered exclusively on the retail bill. Resellers' strong support (TRA at ii, 4) for an explicit end user surcharge demonstrates that RTC is wrong.

Contrary to the Commission's concern (para. 853) (and apparently RTC's) about maintaining carrier pricing flexibility, the vigorous carrier support for a mandatory end user surcharge belies the need for such flexibility for recovery of the USF

tax.⁷ Moreover, a mandatory end user surcharge would be administratively simpler than the current method in that it avoids unnecessary rate recalibration whenever a carrier's USF support obligation changes. U S WEST Petition at 10; GTE at ii.

With a mandatory end user surcharge, there would be no possibility whatsoever that access customers would bear the burden of the ILECs' USF obligation (whereas CLECs providing service through TSR would have no ability to deflect their USF obligation through access charges) because each carrier's USF obligation would be transferred directly to its end user customers. A mandatory surcharge would thus solve the competitive neutrality problem and have other salutary effects, including administrative simplicity, accountability, visibility, and avoid adverse impacts on customer-carrier relationships.

For these reasons and given the overwhelming support for a mandatory end user surcharge (AT&T Petition at 6 n.8, citing others; *see also* para. 853 n.2135), the Commission should reconsider the mechanism for recovering USF support and adopt an explicit, mandatory end user surcharge on all interstate retail telecommunications service revenues "that is both based on and reflected in the end user's retail bill." U S WEST Petition at 10.⁸

⁷ See, e.g., AT&T at 14-17; Bell Atlantic at 9-10; BellSouth at 7; Comcast/Vanguard at 6; GCI at 9; GTE at 3-4 (and n.11 citing others); Sprint at 7; TRA at 4; TW Comm at 12; MCI Petition at 11-12; U S WEST Petition at 10; see also Ad Hoc at 6.

⁸ If the Commission does not adopt a mandatory end user surcharge for USF recovery in this proceeding, it should, at a

Alternatively, if (for any reason) the Commission does not adopt a mandatory end user surcharge, it should mitigate the competitive disadvantage between ILECs and CLECs by creating a new, separate interstate usage-sensitive access rate element in the Common Line basket to recover the ILECs' USF support obligation, beyond what could be recovered through the SLC. The rate should be applied to IXCs along with their originating interstate access charges, but it should not apply to interstate calls that originate from end user customers served by CLECs using TSR. Thus, ILECs would only be able to recover their USF support obligation if they maintain their local service provider status with the customer, and IXCs who enter the local service market as CLECs using TSR, will no longer have to compensate their ILEC competitors for their USF obligation. CLECs would therefore no longer be competitively disadvantaged by being forced to recover not only their own USF obligation but also the ILEC USF flow-back. Only IXCs that enter the local exchange market as CLECs would be able to avoid the USF rate, thereby creating additional incentives for IXCs to compete in local markets. By contrast, if the ILEC USF support obligation were to remain embedded in its interstate access charges, then all IXCs would derive the benefit of reduced access charges resulting from

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minimum in the Access Reform proceeding, allow the ILEC flow-back that is assigned to the Common Line basket to be recovered from end users via the SLC to the extent that actual SLC rates in a study area are below the SLC caps. See Access Reform Order, para. 174; see AT&T Petition at 7 n.12; MCI Petition at 7-8.

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some IXCs entering the local market. A new rate element, updated through quarterly exogenous adjustments, would also ensure that ILECs recover only that which they are required to contribute to the support of universal service.⁹

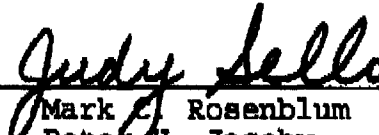
CONCLUSION

To the extent and for the reasons stated above and in AT&T's Petition and Opposition, the Commission should reconsider its Universal Service Order to achieve a competitively neutral regime that will sustain the new universal service program.

Respectfully submitted,

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September 3, 1997

⁹ See AT&T Opposition to Petitions for Reconsideration, filed August 18, 1997, in Access Charge Reform, CC Docket 96-262, at 17.

Appendix A

**UNIVERSAL SERVICE
PARTIES FILING OPPOSITIONS TO
PETITIONS FOR RECONSIDERATION
CC DOCKET 96-45**

360° Communications Company ("360°")
Ad Hoc Telecommunications Users Committee ("Ad Hoc")
AirTouch Communications, Inc. ("AirTouch")
State of Alaska ("Alaska State")
American Mobile Telecommunications Association ("AMTA")
AMSC Subsidiary Corporation ("AMSC")
Arch Communications Group ("Arch")
AT&T Corp. ("AT&T")
Bell Atlantic
BellSouth Corporation and BellSouth Telecommunications, Inc.
("BellSouth")
Cellular Telecommunications Industry Association ("CTIA")
Centennial Cellular Corp. ("Centennial")
Colorado Public Utilities Commission ("Colorado")
Comcast Cellular Communications, Inc. and Vanguard Cellular
Systems, Inc. ("Comcast/Vanguard")
GE American Communications, Inc. ("GE Americom")
General Communications, Inc. ("GCI")
GTE Service Corporation ("GTE")
State of Hawaii ("Hawaii")
International Business Machines Corporation ("IBM")
Loral Space & Communications Ltd. ("Loral")
MCI Telecommunications Corporation ("MCI")

New Mexico Attorney General ("NM AG")

New York Clearing House Association, Master Card
International and VISA, U.S.A., Inc. ("NYCHA/
MasterCard/Visa")

PanAmSat Corporation ("PanAmSat")

Personal Communications Industry Association ("PCIA")

Rural Telephone Coalition ("RTC")

The Southern New England Telephone Company ("SNET")

Sprint Corp. ("Sprint")

TCA, Inc. - Telecommunications Consultants ("TCA")

Telecommunications Resellers Association ("TRA")

Time Warner Communications Holdings, Inc. ("TW Comm")

United States Catholic Conference, et al. ("USCC")

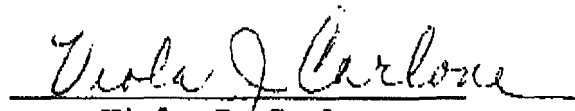
United States Telephone Association ("USTA")

U S WEST, Inc. ("U S WEST")

Virgin Island Telephone Corporation ("Vitelco")

CERTIFICATE OF SERVICE

I, Viola J. Carlone, do hereby certify that on this 3rd day of September, 1997, a copy of the foregoing AT&T Reply to Oppositions to its Petition for Reconsideration was served by U.S. first class mail, postage prepaid, to the parties listed on the attached Service List.


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